(3)

No. 06-1103

In the

Supreme Court of the United States

IRIS C. WOOD,
Petitioner,

Vs.

JAMES BILLINGTON, LIBRARIAN OF CONGRESS
Respondent

On Petition For A Writ Of Certiorari
To United States Court of Appeals
for the District of Columbia Circuit

PETITION FOR REHEARING

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As per Supreme Court Rule 44.2, the petitioner herein respectfully moves this Court for an order to (1) vacate its March 19, 2007, denial on the Petition for Writ of Certiorari, presented on January 24, 2007, and (2) to grant this Petition for Rehearing. As grounds for this motion, petitioner respectfully states the following:

1. The Grant of Certiorari in *Ledbetter vs. Goodyear Tire and Rubber Company.* Also see USCA-DC *Miller v. Navy* of January 19, 2007.

By far the most frequent reason for granting a timely petition for rehearing after the denial of certiorari is the intervention of another case of substantial or controlling effect not previously presented. In this *Wood* case, there are two pertinent cases. Supreme Court Practice, 8th Edition, p. 730.

In Docket 05-1074, this Court granted certiorari in *Ledbetter vs. Goodyear Tire and Rubber Company*, a similar case (private sector) regarding Title VII sex discrimination and scope of damages prior to filing. District Judge Urbina in *Wood v. Billington* concluded (in this civilian public sector case) that women are treated more harshly than men at the Library of Congress. Mrs. Wood was hired in 1991 at lower pay than her male counterparts prior to filing her 1993 complaint of prohibited discrimination. The *Miller v. Navy* case in the same DC District prohibits public sector gender based promotion discrimination as contrary to U.S. law.

As noted in *Ledbetter,* aggrieved individuals must file an administrative charge of discrimination with the Equal Employment Opportunity Commission (EEOC) within one hundred and eighty days of the event. 42 U.S.C. Section 2000e-5e.

On C-SPAN Radio Supreme Court Oral Arguments on *West v. Gibson*, 1999, had related EEO concerns to the *Wood* case.

As a public sector employee at the Library of Congress, Mrs. Wood had no statutory procedure whatsoever to file a complaint with the EEOC or a "mixed" case with Merit Systems Protection Board (MSPB). This is not equal justice.

Similarly, Mrs. Wood has no statutory opportunity for relief from the Office of Special Counsel (OSC) or justice under the Congressional Accountability Act (CAA).

The *Ledbetter*, *Miller,* and *Wood* cases raise the appropriate scope of relief from a discriminatory discrete event. Both cases (private and public sectors) concern the present effect of past illegal acts and perpetuated consequences of forbidden discrimination. *United Air Lines, Inc. v. Evans,* 431 U.S.C. 553 (1977).

The issue stated in *Ledbetter* applies in *Wood*, i.e. whether and under what circumstances a plaintiff may raise sex discrimination under Title VII of the Civil Rights Act of 1964 alleging illegal pay discrimination when the disparate pay is received during the statutory limitations period, but is the result of intentionally discriminatory pay decisions that occurred outside of the limitations period.

Mrs. Wood was not promoted from a GS-12 to a GS-13, (comparable to Navy LCDR pay in *Miller v. Navy*) until intervention of a Congressional pay plan and further Congressional action, similar to the ruling in *Miller* for remand to lower court and to the Secretary of the Navy for a Special Selection Board for promotion. Consistency in Circuit decisions would be to remand and direct Librarian Billington to convene a special promotion board. No male attorney at the Library of Congress with equal qualifications to Mrs. Wood, including a Juris Doctor degree, a Masters degree, and more than a decade of legal experience with expertise in Army contracting, procurement and administrative law, yet Mrs. Wood received the lower pay of a GS-12, and did not receive promotions as the men did.

Mrs. Wood overcame a congenital heart defect and history of open-heart surgery to earn these achievements only to be "disabled" by prohibited and discriminatory practices of managers of the Library of Congress in reprisal for her 1993 protected EEO activity citing disparate promotion chances for women and men.

The retaliation was so severe in her case that an archaic medical regulation, eliminated decades ago by the Executive Branch, was used against her as double reprisal. First, she suffered retaliation for her EEO activity questioning her promotions and pay. Second, after she and a few others were instrumental in getting the abusive regulation changed, her punishment has continued until this day, for 14 years.

Her efforts to pursue her original complaints about promotion and pay were drowned out by noise from endless retaliation, which continues to this day. The Library pursued their reprisal relentlessly for 14 years, yet never investigated her original concerns and complaints, or provided a final report, about pay and promotions. The Library EEO office even lost her original complaint file.

In *Ledbetter*, this Court must decide in the private sector whether there is a basis for an extra-textual limitation on "how far back" a plaintiff may reach for evidence to prove liability on an otherwise timely claim. Similarly, this Court should decide for the public sector how far back the Library of Congress refused Congressional urging to stop abusing its forced fitness for duty examinations, to adopt Americans with Disabilities Act standards, and to stop disparate impact against women regarding unfair pay or punishment policies.

The argument at page two of the *Ledbetter amicus* brief by the National Partnership for Women and Families applies in *Wood*. "Pay discrimination is rarely accompanied by overt bias, and employee salaries are notoriously cloaked in

secrecy. Victims thus have difficulty perceiving pay discrimination and, in any event, are unlikely to promptly complain about it. These difficulties are compounded for employees subjected to discrimination in their starting salaries, when much pay discrimination begins."

Despite her experience as a GS-905-13 attorney with the U.S. Dept of the Army, the Library of Congress low-balled Mrs. Wood's entering grade level because she is a woman. Challenging her initial GS-12 grade set her on a collision course with managers who consistently and intentionally stalled and "held back" her promotions with increased pay.

By early 1993, the pay and grade differential between Mrs. Wood and her male attorney peers had doubled or tripled. Despite her independence from need for supervision because of her knowledge and capability to do complex contracting work, the Library of Congress ignored the Office of Personnel Management (OPM) grade standards for her progression in her GS-905-12/13/14 career ladder position (paid from Library sales) because she was a woman.

When Mrs. Wood pressed her claim of prohibited discrimination in the disparate treatment of her and the disparate impact of women's substandard pay and promotion opportunity, she suffered further reprisals. Congress mandated to the Library of Congress that Mrs. Wood should receive promotions in her career ladder under her mandatory Promotion Plan from a GS-12 to that of a GS-14, as part of the Library's 1992 reorganization plan and budget for OGC Division. In reprisal, management kept Mrs. Wood at the ceiling of a GS-13; and then placed her on leave without pay from 1995 to 1999 to prevent her from receiving a further scheduled promotion to GS-14 in 1995 under her mandatory Promotion Plan, and from receiving further promotion to GS-15. The wrongful acts have always been about promotions.

The Library of Congress denied to Mrs. Wood, as a permanent employee, any meaningful due process review as to her placement on leave without pay in 1995, just prior to her scheduled promotion review. The Library denied to Mrs. Wood any meaningful due process review as to her contrived termination six years later, in 2001.

The argument at page three of the *Ledbetter amicus* by the National Employment Lawyers Association applies in *Wood.* "Each paycheck that delivers less to a black [or female?] than a similarly situated white [or male?] is a wrong actionable under Title VII, regardless of whether the fact that this pattern was begun prior to the effective date of Title VII." *Bazemore v. Friday,* 478 U.S. 385, 395-96 (1986).

"This holding honors the plain language of Title VII, makes practical sense, and has been consistently applied to the courts and federal enforcement agencies... It also ignores Congress' ratification of this Court's longstanding interpretation on the provision of Title VII that governs the timeliness of pay discrimination charges." *Ibid.*

Mrs. Wood respectfully requests joinder of her case with *Ledbetter.* Alternatively, Mrs. Wood respectfully requests a stay in deciding her case pending outcome of the *Ledbetter* decision, with the possibility of a favorable decision or remand in the *Wood* case to a jury trial at the District level.

Mrs. Wood's case involves not only statutory access to Title VII and ADA laws, including extreme reprisal, but also involves constitutional issues about due process, appeals, and property and liberty rights.

2. Violation of the Principles in *AFSCME Local 247 v. Billington,* 740 F. Supp. 1, 4 (1990) creates serious aberrations in decisions between those of the District of Columbia Circuit and all other Circuits.

District Court Judge Urbina and the District of Columbia Circuit have overturned sixteen years of precedent that a non-probationary federal employee has a property and liberty interest in his or her Library of Congress employment. Now all employment at the Library of Congress is at will.

The question of whether there are property and liberty rights in federal employment at the Library of Congress remains unresolved in light of the Library's actions against Mrs. Wood in both sexual discrimination and reprisals, complaints on March 23, 2007, regarding the former Assistant General Counsel Wood's non-selection in two recent attorney - vacancies at the Library of Congress.

3. The District of Columbia Circuit has increased uncertainty regarding substantive and procedural due process guarantees regarding all federal employment in contrast with other Circuits, and within its own Circuit as shown in *Miller v. Navy*, January 19, 2007.

The District of Columbia Circuit has recognized that seventeen months of administrative leave from a federal government position constitutes constructive termination of employment. However, Mrs. Wood suffered four years of leave without pay from 1995 to 1999. No federal court has addressed the failure of Library of Congress adjudicator Michael Shelley to issue a decision as to constructive termination. See *Miyai v. Dept of Transportation, 32 MSPR 15 (1968).*

Absent charges for 4 years, Mrs. Wood had no formal grievance to appeal. No federal court has addressed the "stale" nature of all charges against Mrs. Wood after years, the long-term stigma to this day from severe pre-textual or false charge, leading to "labeling" by co-workers, especially someone with a history of a handicap, or the extreme level of reprisals demonstrated by the Library's stalling for more than

four years, not the least of the damages were loss of pay, loss of promotions, and loss of reputation among co-workers. And no federal court has explained how each person involved in charges against Mrs. Wood was simultaneously tied to her EEO complaints and her boss Kominski, thus creating "Conflicts of Interests" in their actions. Indeed, her boss was a voting member on a committee to bring charges against her while her EEO complaints against him were pending.

No court has answered how the Library pretended for years and years to provide grievance and appeal rights, while never raising an objection or defense on the administrative or court levels, thereby, depriving Mrs. Wood of her due process right to argue the issues.

4. Compelling Reasons to Grant Certiorari under Supreme Court Rule 10

Justice Scalia was quoted in the February 21, 2006, Washington Post article about the grant of certiorari in the *Ledbetter* case, as saying, "I don't care much about your particular case, I am not about to produce a better result in your case at the expense of creating terrible results in a hundred other cases." Said another way Appeals cases must help many citizens, not just one. This *Wood* case addresses the rights of many thousands of Legislative Branch employees, while it corrects gross injustices against Wood.

The *Wood* case as currently ruled creates a terrible result for forty-two hundred (4200) Library of Congress employees, and more at GAO, CBO, and other related Article I agencies. If uncorrected for those public sector employees, the decision begins a slippery slope for undermining the property and liberty interests of over two million other civilian federal workers who work to improve the life of all citizens. Supreme Court Rule 10 channels certiorari considerations into basic categories. These include the federal or state

character of the court rendering the decision as to which review is sought. Rule 10, [with concerns] states:

> "Review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. [self-fulfilling ?] The following, although neither controlling [unconstitutionally vague ?] nor fully measuring the Court's discretion [unconstitutionally broad ?], indicate the character of the reasons that the Court considers:
>
> (a) **A United States court of appeals** has entered a decision in conflict with a decision of another United States court of appeals on the same **important** matter...or **sanctioned such a departure by a lower court**, as to call for an exercise of this Court's **supervisory power...**"

5. Invocation of Mandatory Supervisory Power

Does the Court of Appeals of the District of Columbia Circuit *en banc* actually believe District Court Judge Urbina that non-probationary federal employment is at will? Judge Urbina failed to apply the mandatory Supreme Court standard that involuntary separation of a federal worker must meet the criterion of "furthering the efficiency of the service." *See Arnet v. Kennedy*, 94 S.Ct. 1633 (1974); Lloyd-LaFollette Act, 5 U.S.C. 7513(a).

In *Wood v. Billington*, arguably the most important Supreme Court case in the two hundred year history of the Library of Congress, we have a decision of a federal court of appeals that conflicts with sister courts "on the same important matter" of due process guarantees regarding federal non-probationary employment, and conflicts with its own Circuit rulings with the *Miller v. Navy* decision of January 19, 2007.

However, there is not a Library of Congress in every Circuit, only one such entity in the District of Columbia. Do we care if the rights of federal librarians get permanently shelved?

Mrs. Wood hereby petitions to invoke the U.S. Supreme Court's inherent supervisory power over lower courts.

6. Conflict between Decisions in Granting Certiorari

Judge Urbina abandoned the Supreme Court standard that an involuntary separation must further **"the efficiency of the service."** *Arnet v. Kennedy, Ibid.* Within the meaning of the 1995 Amendment to Rule 10, this is important for more than two million federal civil servants. Judge Urbina's District Court opinion reflects either a difference in general principle or reasoning from the view of property interest in federal employment by all other Circuits.

Judge Urbina expressly attributes to judicial dicta and inferred Justice Department laziness the failure of the federal government in 1990 to contest the notion of property in the *AFSCME Local 247 v. Billington* case decision. He implies that there is no *stare decisis* in the sixteen years thereafter that non-probationary Library employees have enjoyed a property interest in their federal employment and upon which Mrs. Wood relied in accepting her job offer in 1991. If permanent employees have no rights, then what is the difference in a permanent, probationary, and temporary employee or job at the Library of Congress?

A genuine conflict, as opposed to judicial whim, arises when it can be said with confidence that two courts have decided the same legal issues in opposite ways, based on their holdings in different cases with very similar facts. Such is the case with Wood, compared with other circuits and Wood compared with *Miller v. Navy* in the D.C. Circuit.

We must assume the sincerity of Judge Urbina and the District of Columbia Circuit *en banc* that supported his decision that expressly overturned legal precedent in the *AFSCME Local 247 v. Billington,* 740 Fed. Sup. 1, 4 (1990). This established the rule in 1990 that non-probationary employees of the Library of Congress have a property interest in employment protected by 5th Amendment due process guarantees. Due to the errant decision of Judge Urbina, upheld by the D.C. Circuit, both of which undermine the property interest rights for thousands of federal employees, this principle of fairness needs to be reaffirmed by the Supreme Court by its grant of Certiorari in *Iris C. Wood v. James Billington, Librarian of Congress.*

CONCLUSION

For the reasons set forth above, as well as those contained in the Petition for Writ of Certiorari, the petitioner prays that this Court reviews and reverses the judgment and opinion below and grant petitioner reinstatement of employment at the Library of Congress with back pay, plus benefits and other damages as mediated or awarded by a Jury of Peers.

Respectfully submitted,

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Date: April 13, 2007

CERTIFICATE OF PETITIONER

As the petitioner, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

_____/s/_____
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Certificate of Service